

REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration are respectfully requested in view of the preceding amendments and the following remarks.

Claim amendments/Status

In this response, claim 18 is amended via the inclusion of the subject matter of claim 19, and claim 19 is cancelled. Claims 18 and 20-43 therefore remain pending in this application.

Rejections under 35 USC § 102/103

The rejections of:

- 1) claims 18-22 and 24-28 under 35 USC § 102(b) as being anticipated by US Pat. No. 5,884,759 to Gueret;
- 2) claim 23 under 35 USC § 103(a) as being unpatentable over Gueret in view of Coory (US 6,679,375); and
- 3) claims 29 and 38-42 as being unpatentable over Gueret in view of Coory; are respectively traversed.

It is submitted that the Examiner has incorrectly identified some features of the prior art cap as referenced in the text of the specification and in Figures 1 - 6 of the cited prior art to Gueret.

The applicants further submit that the Examiner has misunderstood the invention and on the basis of the examiner's analysis of Gueret submit that this reference does not anticipate the claimed invention. Nevertheless, the Applicant's own review indicates that Gueret does require careful analysis to reveal the above-mentioned shortcomings..

The applicants offer the following interpretation of claim 1 of the present invention in relation to the Gueret disclosure (the features described in the following are taken directly from claim 1 of the present application, while the numerals relate to features as shown particularly in Figures 2 — 6 of Gueret);

"a locating element comprising;

a shoulder (22, 34) having an edge (defined by the junction of (22/34)) separating two substantially orthogonal shoulder elements (22, 34)) wherein a first shoulder element (22) is connected to the flexible membrane (25) and the second shoulder element (34) is connected to the outer skirt (17, 18) and an

inner skirt (unmarked triangular portion shown for example in Figure 4, the triangular portion forming an inner wall to the cavity 21 which in turn mates with the top of the container(6)) extending from the second shoulder element (34) and spaced a distance from the edge (22/34) wherein the shoulder and inner skirt (x) form an annular bounded ledge (24) extending between the inner skirt (x) and the edge of the shoulder (22, 34) on which a seal can rest so as to span the space formed by the shoulder element and the flexible membrane (25)".

From this analysis, the ledge (24) in Gueret may correspond with the ledge formed between the shoulder element (8) and the inner skirt (9) of the present application.

However, the flexible membrane (25) of Gueret is not connected (in a strict sense) to the first shoulder element (22) as required by claim 1 of the present application. While the base (22, 34, 18 and 17 and connecting parts), cover (15) and push button (32) can be formed integrally according to Gueret (column 2, lines 67 to column 3, line 3), the gasket/membrane (23, 25, 26 and 27) is a separate part which is fitted to the base after the base has been closed by fitting a seal (3) to the annular ledge (24), and material has been added into the cavity (5) formed between the walls (22). This is described in Gueret, column 5, lines 47 — 49 which read:

"the film (3) is heat sealed onto the piece (20) and then the chimney (22) is filled with the substance P and the gasket (23) is put into place".

The gasket/membrane is not formed integrally with the remainder of the cap, although in use it does fit closely around the walls (22) and effectively seals off the second cavity (5). However, it is not physically connected in the manner required by the present invention.

The flexible membrane of the present application is formed integrally with the cap. In particular it is formed integrally with the first shoulder element.

Accordingly, and to clarify the issue, claim 1 has been amended to include the subject matter of previously submitted claim 2 (now cancelled), namely that:

"the outer skirt, the flexible membrane, the shoulder and the inner skirt are formed integrally.".

The applicants consider that this amendment is fairly based, given that claim 2 previously read:

"wherein the flexible membrane is formed integrally with the closure element".

The amendment is also fairly based by reference to Figure 1 of the present application which illustrates a second closure in which all parts are formed integrally with one another.

The applicants submit therefore that claim 18 as amended herein is not anticipated by Gueret. Further, the applicants submit that claim 18 is also inventive over the cited prior art in that, being integrally formed, the outer skirt, flexible membrane, shoulder and the inner skirt form a cup (when oriented with the flexible membrane at the bottom) capable of holding a substance without leakage. This is a very important feature as the closure element for a dispenser may be used to hold a substance to be dispensed. In some instances the substance may be in powder or liquid form, in which case it is essential that the closure element is leak proof — as is the case of the present closure element in which the outer skirt, flexible membrane and connecting shoulder are formed integrally.

The Examiner has also objected to independent claim 27 as being anticipated by Gueret.

Claim 27 includes the container, and specifically the container including a flange extending inward from the wall into the second aperture. It further specifies that in use:

"the seal is held sealing in place to span the opening in the second aperture by the action of the locating element directly or indirectly bearing against the flange of the second aperture".

A review of Figures 2 - 6 of Gueret fail to show any indication of a flange extending inwardly into the second aperture of the container (6). The Examiner considers that the neck of the container (6), indicated by (39) in Figure 4, constitutes a flange. The applicants respectfully disagree with that interpretation. A flange, according to the Oxford Dictionary is *"a projecting flat collar or rib used for strengthening or attachment"*. The thin surrounding of the neck of the container (6) does not form a flat collar and would not be recognized as a flange by a person skilled in the art.

Further, the feature indicated by (39) in Gueret does not extend into the aperture as specified in claim 27 of the present application, but rather forms the boundary/outer perimeter of the aperture.

Furthermore, the language of claim 27 requires that the seal be held in place by the action of the locating element directly or indirectly bearing against the flange of the second aperture. Quite clearly from the figures of Gueret, the rim (39) of the neck of the container (6) enters the groove (21) at the base of the cap and does not, at any time, directly or indirectly bear against the locating element in such a way as to hold the seal in place. As clearly seen in Figures 3 or 4, the seal (3) does not engage with any part of the container (6).

The applicants submit that claim 27 clearly distinguishes over the invention disclosed by Gueret.

The remaining claims all depend directly on either claim 18 or claim 27, and as the applicants consider that claim 18, amended as discussed herein, and claim 27 are both novel and inventive, the same applies to the dependent claims.

Conclusion


It is respectfully submitted that the claims as they have been amended are allowable over the art which has been applied in this Office Action. Favorable reconsideration and allowance of this application are courteously solicited.

Early issuance of a Notice of Allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,
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